



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2012-0292; FRL-9671-7]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Maryland; Permit to Construct Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to sources which are exempt from preconstruction permitting requirements under Maryland's New Source Review (NSR) program.

EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0292** by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: [cox.kathleen@epa.gov](mailto:cox.kathleen@epa.gov).
- C. Mail: EPA-R03-OAR-2012-0292, Kathleen Cox, Associate Director, Office of Permits and

Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0292**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by e-mail at [talley.david@epa.gov](mailto:talley.david@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On December 1, 2003, the Maryland Department of the Environment (MDE) submitted a formal revision (#03-11) to its State Implementation Plan (SIP). The SIP revision consists of two amendments: A) the repeal of the exemption from permitting requirements for equipment burning solid fuel at a rate of 350,000 British thermal units per hour (Btu/hr) or less, and B) the reduction of the cutoff level of the exemption for stationary internal combustion engines.

## **II. Summary of SIP Revision**

Regulation .10 under COMAR 26.11.02 (Permits, Approvals, and Registration) contains exemptions for certain sources that are not required to obtain approvals or permits to construct prior to the construction or modification of the affected source. Specifically, COMAR 26.11.02.10D (as it currently exists in the Maryland SIP) provides such an exemption for fuel burning equipment using solid fuel with a heat input rate of less than 350,000 Btu/hr. This exemption led to the mistaken belief on the part of some owners/operators of such sources that this equipment was not subject to any air quality related requirements. However, the exemption from permitting requirements does not provide an exemption from other applicable air pollution requirements. No such relief exists in MDE's regulations. Fuel burning equipment must meet all applicable requirements and emissions limitations, regardless of size. In order to remove any ambiguity, COMAR 26.11.02.10D was repealed.

COMAR 26.11.02.10E provides a similar exemption for stationary combustion engines under 1,000 brake horsepower (bhp) operating under 2,000 hours per year, as well as all stationary internal combustion engines under 500 bhp. Regulation .10E was revised to remove the exemption for the larger engines, and now only applies to engines with an output less than 500 bhp, and which are not used to generate electricity for sale or load shaving (*See* COMAR 26.11.02.10E). The lower threshold allows MDE to establish permit conditions on smaller engines, and thus lower the equipment's potential to emit.

The revisions to COMAR 26.11.02.10D and .10E were effective in Maryland on November 24, 2003. The MDE submitted them to EPA for approval into the SIP on December 1, 2003. EPA's review of the SIP submittal finds the revisions consistent with CAA requirements.

### **III. Final Action**

EPA is approving MDE's December 1, 2003 SIP submittal. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### **IV. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date

of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to permit to construct exemptions under Maryland's NSR program may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the CAA.)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 2012

W. C. Early  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR

26.11.02.10 to read as follows:

§ 52.1070                      Identification of plan.

\*           \*           \*           \*           \*

(c)\* \* \*

EPA-Approved Regulations, Technical Memoranda, and Statutes in the Maryland SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*           *           *           *           *				
<b>26.11.02</b>	<b>Permits, Approvals, and Registration</b>			
*           *           *           *           *				
26.11.02.10	Sources Exempt from Permits to Construct and Approvals	11/24/03	[Insert Federal Register publication date] [Insert page number where the document begins]	Removed .10D; revised .10E
*           *           *           *           *				

\*           \*           \*           \*           \*

[FR Doc. 2012-11626 Filed 05/14/2012 at 8:45 am; Publication Date: 05/15/2012]